Supreme Court, U.S.
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NO. 97-1150

In the Supreme Court of the United States

OCTOBER TERM, 1997

GEORGE TRAHAN
Petitioner,

v.

BELLSOUTH TELECOMMUNICATIONS, INC.
Defendant.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

WAYNE T. McGAW
COUNSEL OF RECORD
BELLSOUTH TELECOMMUNICATIONS, INC.
365 Canal Street, Room 1870
New Orleans, LA 70130
(504) 528-2058
ATTORNEY FOR DEFENDANT

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

RESTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Whether the appellate court correctly affirmed the grant of summary judgment to BellSouth Telecommunications, Inc. on the basis that petitioner's breach of the Collective Bargaining Agreement suit under 29 U.S.C. § 185 was time-barred as filed more than six months after the petitioner received notice that his Union chose not to pursue arbitration because it had determined that an arbitrator would probably uphold the company's decision to terminate.

PARTIES TO THE PROCEEDING

1. Petitioner: George Trahan an individual citizen of the United States of America.

2. Respondent: BellSouth Telecommunications, Inc.

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CITATION OF OPINION

"George Trahan v. BellSouth Telecommunications, Inc." No. 97-30517 an unpublished opinion of the United States Court of Appeals for the Fifth Circuit, issued October 8, 1997, See Appendix p. 1.

BASIS OF JURISDICTION

The jurisdictional requirements are adequately set forth in the Petition.

STATEMENT OF THE CASE

Statement of the fact.

George Trahan was terminated from his employment as a Service Technician with BellSouth Telecommunications, Inc. ("BST") December 17, 1992. At the time of his termination he was a member of the Communication Workers of American ("CWA"). As such, the terms and conditions of his employment were subject to the provisions of a Collective Bargaining Agreement ("CBA") by and between BST and the CWA, effective August 9, 1992 and in full force from August 9, 1992 through August 5, 1995. After his termination, the CWA, pursuant to the Collective Bargaining Agreement, filed a grievance on behalf of Mr. Trahan. The CWA pursued the grievance through the multi-tiered procedure provided in the Collective Bargaining Agreement until it reached the arbitration stage. The CWA decided not to pursue arbitration, and notified Mr. Trahan by certified mail on January 7, 1995 of its decision. Eighteen months later, on July 17, 1996, petitioner filed the instant lawsuit.

Jurisdiction in the Federal District court was based on 29 U.S.C. § 185. On April 2, 1997 the United States District Court for the Western District of Louisiana granted a motion for summary judgment filed by defendant on the issue of the statute of limitation. A motion for new trial was filed on April 10, 1997 and denied on May 8, 1997. An appeal was lodged with the Court of Appeal for the Fifth Circuit on May 15, 1997. Jurisdiction was based on 28 U.S.C. § 1291. On October 8, 1997 the Fifth Circuit affirmed the grant of summary judgment.

REASONS FOR DENYING THE WRIT

Petitioner's arguments are unavailing because *DelCostello v. Teamsters,* 462 U.S. 151, 170-171 (1983), was correctly decided; the hybrid § 301 claim was untimely pursued; and there was no repudiation of the Collective Bargaining Agreement by BST. Thus, there is no reason for further review.

I. No Basis to Reverse *DelCostello*

Petitioner argues that the 6 months statute of limitations established in *DelCostelio* for a hybrid § 301 suit should be overturned. The court's reasoning is as sound today as it was in 1983. A hybrid § 301 suit has no close analogy in state law; rather it logically falls within the framework of 29 U.S.C. § 160(b) of the National Labor Relations Act. The National Labor Relations Act is "actually designed to accommodate a balance of interests very similar to those at stake here [a § 301 suit]." *DelCostello,* 462 U.S. at 169. As the court noted, "it is more apt than any ... state-law parallel." *Id.* On that

basis the Court applied the National Labor Relations Act six-month limitation period for making charges of unfair labor practices to the National Labor Relations Board. Thus, Mr. Trahan's suit is untimely as filed more than 6 months after receiving notice from his Union that it would not pursue arbitration.

Moreover, even if the Court were to follow the dissenting opinions in *DelCostello,* Mr. Trahan's suit would still be untimely. Justices Stevens and O'Connor opined that relevant state law statutes of limitation for legal malpractice actions should apply to hybrid § 301 claims. Under La. R.S. 9:5605 a legal malpractice claim must be filed within one year of the alleged act, and of course Mr. Trahan filed suit eighteen months after the Union advised him that it would not pursue arbitration. Thus, Mr. Trahan's suit is untimely under both views espoused in *DelCostello.*[1]

II. No Timely Suit Filed.

Petitioner's Union determined that an arbitrator would likely uphold BST's decision to terminate, and the Union therefore decided not to pursue arbitration. By his own admission Mr. Trahan received notice of the Union's decision on January 7, 1995. Under *DelCostello* Mr. Trahan had to bring suit for breach of the Collective Bargaining Agreement within six months of January 7, 1995. He did not.

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[1] Regardless of timeliness, Mr. Trahan's testimony precluded any legally sufficient allegation of unfair representation against his Union because he merely complained that the Union failed to arbitrate. *Vaca v. Sipes,* 386 U.S. 171 (1967); *Chernak v. Southwest Airlines Co.,* 778 F.2d 578 (10th Cir. 1985).

III. No Repudiation.

Petitioner contends that his case differs from *DelCostello* because BST repudiated the Collective Bargaining Agreement by failing to arbitrate his termination grievance. However, it is undisputed that the Union pursued Trahan's grievance until January 4, 1995; whereupon, it determined not to pursue arbitration.

In argument, petitioner mischaracterizes the Union's notice of its decision to not arbitrate as indicating it was "forced" by BST to do so. Then he equates "forced" with "repudiation." In fact, there is neither evidence of "force" nor of repudiation. Indeed, the Union unilaterally decided that it could not prevail on the merits, and it elected not to pursue arbitration. As a matter of law, there has been no repudiation. The Union's unilateral decision to not request arbitration does not constitute repudiation by BST of the Collective Bargaining Agreement.

If Trahan believed the Union mishandled his grievance by failing to arbitrate he had the right, within six months of notice of its decision not to arbitrate, to file suit against the Union for breach of its duty of fair representation and against the company for breach of the Collective Bargaining Agreement. The Fifth Circuit's affirmation of the district court's grant of summary judgment on the basis of untimeliness is merely an application of well established law. It is not an expansion or an extension of the clear rule of *DelCostello.*

CONCLUSION

For the foregoing reason, the Petition for Writ of Certiorari filed by the Petitoner should be denied.